

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

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THE UNITED STATES OF AMERICA :  
: Case No. 5:09-CR-05(HL)  
VS :  
: July 30, 2009  
: Macon, Georgia  
JOHN LEE ANDERSON, III, :  
DEFENDANT. :

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SENTENCING HEARING

BEFORE THE HONORABLE HUGH LAWSON  
UNITED STATES DISTRICT JUDGE, PRESIDING

APPEARANCES:

FOR THE GOVERNMENT: PAUL MCCOMMON, AUSA.  
UNITED STATES ATTORNEY'S OFFICE  
P.O. BOX 1702  
MACON, GA 31202-1702

FOR THE DEFENDANT: FRANK HOGUE  
HOGUE & HOGUE, LP  
341 THIRD STREET  
MACON, GA 31202

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SALLY L. GRAY, CCR, RPR, USCR  
P.O. BOX 875  
MACON, GA 31202-0875

( 478-752-3497 )

P R O C E E D I N G S

JULY 30, 2009

**THE COURT:** John Lee Anderson.

**MR. MCCOMMON:** Good morning, Your Honor.

**THE COURT:** Good morning. Good morning, Mr. Hogue.

**MR. HOGUE:** Good morning, Your Honor.

**THE COURT:** Mr. Anderson.

**THE DEFENDANT:** Good morning, sir.

**THE COURT:** What says the government?

**MR. MCCOMMON:** Your Honor, there are two objections that have been entered into by the government and by the defendant, but before I address those, there were some victim issues in this case.

Several victims whose images were possessed by Mr. Anderson had expressed that their victim impact statements be made available for the Court and the U.S. Attorney's Office has contacted them, obtained those victim impact statements, and made those available for the probation office, and I think those were made available for the Court and also to the defense.

So, the government has complied with its obligations as to the victims in this case. There was also one victim who is the victim of what's known as the Misty Series who has an attorney, Mr. James Marsh.

Originally Mr. Marsh had made a request for restitution

1 in this case, and the Court, at the request of the government,  
2 signed an order to bifurcate the proceedings so that  
3 restitution could be possibly later addressed by the Court.  
4 Mr. Marsh withdrew his request for restitution. So that is no  
5 longer an issue.

6 **THE COURT:** Did you withdraw it in writing?

7 **MR. MCCOMMON:** Yes, sir. Yes, sir, we received a  
8 communication from him that he would not intend to pursue  
9 restitution in this case.

10 **THE COURT:** Is that a part of the record?

11 **MR. MCCOMMON:** I furnished a copy to probation. I did  
12 not make it a copy of the Court's record.

13 **THE COURT:** Don't you think it should be in the record?

14 **MR. MCCOMMON:** I can do that, Your Honor.

15 **THE COURT:** Go ahead.

16 **MR. MCCOMMON:** So that would resolve the victim and  
17 restitution issues.

18 **THE COURT:** So there are none?

19 **MR. MCCOMMON:** There are none.

20 **THE COURT:** Do you agree with that, Mr. Hogue?

21 **MR. HOGUE:** I do, Your Honor.

22 **THE COURT:** Okay. What else?

23 **MR. MCCOMMON:** Your Honor, there were two objections  
24 made by the government and by the defense, and they were  
25 addressed by the probation office in the revised presentence

1 report dated June 9th, 2009. So let me address those.

2 The first is, there was -- in Paragraph 22, there was an  
3 enhancement of two levels for distribution, and it was the  
4 position of the probation office that there were at least two  
5 instances where Mr. Anderson distributed child pornography,  
6 and that the enhancement was appropriate because the images in  
7 question reflect the sexual exploitation of a minor and that  
8 the adjustment is proper. It's the position of the government  
9 that this enhancement is not appropriate.

10 It's the government position that that enhancement should  
11 only be used where a defendant distributes child pornography  
12 as defined by law, and based upon my viewing of these images  
13 and the chats that were involved -- Mr. Hogue came over one  
14 day, and we spent three hours together, and I showed him  
15 everything -- based on my examination of the evidence, Mr.  
16 Anderson did not distribute child pornography as defined by  
17 the statute. So therefore the government would not support  
18 that two-level enhancement.

19 Now, certainly in the chats there was discussions of  
20 material. There was -- On two instances there was images that  
21 involved minors, but the government would not view those  
22 images as being child pornography as defined by law. In the  
23 government's view, that's what this enhancement is for, for  
24 someone who distributes child pornography.

25 **THE COURT:** Two parts of it; distribution, and then

1 child pornography?

2 MR. MCCOMMON: Yes, sir.

3 THE COURT: Do you contend that there was no  
4 distribution of whatever it was, whether it was child  
5 pornography or not?

6 MR. MCCOMMON: He transmitted images, but --

7 THE COURT: Is that distribution?

8 MR. MCCOMMON: No, sir. It's distribution, but it's  
9 the government's position that that's not -- it was not child  
10 pornography.

11 THE COURT: Well, again, listen to what I'm saying.  
12 There are two parts here under consideration. One, is  
13 distribution, the other is child pornography.

14 Do you contend that there was no distribution of  
15 anything, or do you concede that there was distribution, but  
16 it's the government's position what was distributed was not  
17 child pornography?

18 MR. MCCOMMON: The latter.

19 THE COURT: Okay. So there was distribution?

20 MR. MCCOMMON: Yes, sir.

21 THE COURT: As either under the statute or under the  
22 Guideline 2G2.2(b)(3)(F).

23 MR. MCCOMMON: There was --

24 THE COURT: That's what it says here.

25 MR. MCCOMMON: Yes, sir. There was distribution.

1           **THE COURT:** Okay. So, how is a determination to be  
2       made as to whether the matter which was distributed was child  
3       pornography? Is the Court required to view it and then make a  
4       factual determination?

5           **MR. MCCOMMON:** Your Honor, if the Court wanted to  
6       pursue it to that extent, that's what the Court would have to  
7       do. I don't know of any other way than to actually view what  
8       was -- what I can do is provide a description to you, if you'd  
9       like to see that.

10          **THE COURT:** All right. Let's hear that.

11          **MR. MCCOMMON:** Your Honor, this is a report that was  
12       provided by Special Agent Jalaine Ward of the FBI. This was  
13       provided to Mr. Hogue.

14          **MR. HOGUE:** Yes, it was.

15          **THE COURT:** And what the next to the last paragraph,  
16       where I put a checkmark, would be what she described.  
17       (Pause)

18          **THE COURT:** Under the statute what must a picture show  
19       to be child pornography?

20          **MR. MCCOMMON:** Actual explicit sexual conduct or at a  
21       minimum, lewd exhibition of the genitals of the child.

22          **THE COURT:** What is a lewd exhibition of the child?

23          **MR. MCCOMMON:** A photograph that focuses on -- that  
24       plainly focuses on genitalia of a child.

25          **THE COURT:** Well, Agent Ward says in this report, she

1 uses the word "numerous sexually explicit pictures of  
2 children." Says "the child is clothed, but her legs are  
3 spread open and much of her buttock are exposed." That does  
4 not meet the test?

5 **MR. MCCOMMON:** Your Honor, based on my view of the  
6 images it did not, but that would be the extent of the  
7 evidence of distribution, is what you've viewed.

8 **THE COURT:** All right. Have you another objection?

9 **MR. MCCOMMON:** Yes. As to Paragraph 24 --

10 **THE COURT:** Now, that was Paragraph 22?

11 **MR. MCCOMMON:** Yes, sir. As to Paragraph 24, there was  
12 an enhancement, a five-level increase for possession of more  
13 than 600 images, and what the presentence report identifies is  
14 276 images and five video clips. And under the Guidelines  
15 each video clip is assumed to be 75 images, so that would  
16 total in excess of 600 images.

17 As a part of the original stipulation, the government and  
18 the defense stipulated that the maximum amount of images  
19 should be 300, and in order for the Court to understand the  
20 reason for that stipulation I need to give a little  
21 background.

22 As is described in the presentence report, this  
23 investigation had a bit of a history before it came to the  
24 FBI. The defendant's wife discovered the child pornography on  
25 the computer. At that time she had private counsel in

1 relation to, I think, a pending divorce action against her  
2 husband. The evidence was originally given to her private  
3 counsel.

4 At some point, the Bibb County Sheriff's Department  
5 became involved. They took possession of the evidence. They  
6 obtained state search warrants, then they arrested Mr.  
7 Anderson, and then after they did all of that, they turned the  
8 case over to the FBI.

9 When the investigation was first presented to the U.S.  
10 Attorney's Office, we made a determination given the hands  
11 that the evidence had gone through, that we were going to only  
12 focus on evidence that we felt was clearly not tainted by the  
13 original handling through the private attorney's office and  
14 through the Bibb County Sheriff's Office.

15 And our view was to -- clearly, the hard drive of Mr.  
16 Anderson's computer was -- that was not tainted. That  
17 evidence would clearly be admissible, and we focused on what  
18 he possessed on the hard drive of his computer, and that was  
19 the 276 issue images. The five video clips came from a DVD  
20 that was otherwise seized.

21 So we did not originally count those five video clips  
22 that were not on the hard drive of the computer. Does the  
23 Court understand what I'm saying?

24 **THE COURT:** I understand what you're saying. They came  
25 from another source?



1           **MR. MCCOMMON:** Well, they came either from a source  
2           that was not as clearly not tainted to the U.S. Attorney's  
3           Office, or were obtained pursuant to state search warrants  
4           that we didn't think were valid. So we confined our count of  
5           the images to what was on the hard drive of his computer.

6           If the Court did include the five video clips, that would  
7           not be improper. The Court could do that. But that's the  
8           reason for the government's stipulation as to the 300 images  
9           and not originally including those five video clips.

10          If the Court does include the five video clips -- which  
11          is going to bump him up to the maximum amount of images under  
12          his guideline -- I would want to point out that under this  
13          definition any video clip is going to be counted as 75 images,  
14          whether that video clip is 2 seconds or up to 5 minutes, and  
15          then above 5 minutes, the guideline says the Court upwardly  
16          depart in that instance. All the video clips were relatively  
17          short, less than a minute.

18          So I point that out to the Court too for whatever use you  
19          want to make in exercising your discretion. So that's the  
20          reason for two objections and that's the reason for the  
21          position of the government.

22                 **THE COURT:** All right. Anything else?

23                 **MR. MCCOMMON:** No, Your Honor.

24                 **THE COURT:** All right. Do you have any objections, Mr.  
25          Hogue?

1           **MR. HOGUE:** Yes, Your Honor. We have made the same two  
2       objections that the government makes to Paragraphs 22 and 24  
3       and for essentially the exact same reasons. This case started  
4       in April 2006 when the divorce attorney turned over the  
5       computer to local authorities. So we reviewed everything in  
6       it.

7           It's been a long, difficult three years now, although the  
8       negotiations ended some months ago, and I think what Mr.  
9       McCommon has relayed to the Court is an accurate and fair  
10      assessment of the evidence, the admissible evidence, the  
11      Fourth Amendment issues that we would have raised, and the  
12      assessment of how to count images and how to evaluate  
13      distribution. So we make the same two objections for all the  
14      reasons that the Court has just heard.

15           **THE COURT:** Well, with respect to Paragraph 22, is your  
16      position the same as that of the government, that is to say,  
17      you concede that there was distribution, but you contend that  
18      the material distributed was not pornographic?

19           **MR. HOGUE:** Yes. We do take that same position. I  
20      will state, in addition to that, it does appear the evidence  
21      shows distribution, however, Mr. Anderson does not remember  
22      ever distributing images. But that's what it appears the  
23      analysis of the computer would reveal. So we have to concede  
24      it on that ground. So, yes, our argument is the same,  
25      distribution, yes; child pornography, no.

1           **THE COURT:** Now, with respect to the material in  
2 Paragraph 22, how many images are involved?

3           **MR. HOGUE:** In the distribution?

4           **THE COURT:** Yes.

5           **MR. HOGUE:** I'm only aware of what's in the report that  
6 you've just looked at. That says two occasions, I believe.

7           **THE COURT:** Well, what it says here is: "Evidence of  
8 distribution can be found on DVD, DEHQ12. Numerous sexual  
9 explicit pictures of children were sent on January 29th, 2006  
10 and February 25, 2006 to Bonerinat1." I guess, that's how --  
11 B-O-N-E-R-I-N-A-T-L. "UID 391040." I don't know what that  
12 means.

13           "The chat includes conversation about having sexual  
14 intercourse with an 11 year old. What could be argued to be  
15 sexually explicit pictures or child erotica was sent to  
16 Applicant 0002002, UID Code 175945, on March 18th, 2006. The  
17 child is clothed, but has her legs spread open and much of her  
18 buttock exposed. There are three pictures of very young  
19 girls, one of which may be sexually explicit."

20           I can't tell from that paragraph how many pictures are  
21 involved, how many images.

22           **MR. MCCOMMON:** Agent Ward is in the courtroom. Do you  
23 have a recollection?

24           **THE COURT:** Do you want her to come up and let her  
25 testify?

1           **MR. MCCOMMON:** Yes, sir.

2           **THE COURT:** Agent Ward, come up and have a seat on the  
3 stand, please, ma'am.

4           **DEPUTY CLERK:** Do you solemnly swear that your  
5 testimony in this case shall be the truth, the whole truth,  
6 and nothing but the truth, so help you God?

7           **THE WITNESS:** Yes, I do.

8           **DEPUTY CLERK:** State your name for the court reporter.

9           **THE WITNESS:** Jalaine J. Ward.

10          **THE COURT:** And you're an FBI agent?

11          **THE WITNESS:** Yes, sir.

12          **THE COURT:** All right.

13                           **JALAIN WARD**

14          **Witness, having first been duly sworn, testified on**

15                           **DIRECT EXAMINATION**

16          **BY MR. MCCOMMON:**

17          **Q.** Agent Ward, do you have a recollection -- you heard your  
18 report read by the Court?

19          **A.** Yes.

20          **Q.** Do you have a recollection of those two instances with  
21 the e-mails as to how many images were actually sent as  
22 attachments to those e-mails?

23          **A.** In reference to the actual report, with the report that  
24 you have, there are numerous images that are traded back and  
25 forth, some of which are not -- would not be considered

1 sexually explicit. There are at least two or three referenced  
2 in that that went back and forth between John Anderson and the  
3 Boner, B-O-N, screen name, that could be considered  
4 pornography or sexually explicit. Certainly what was received  
5 by John Anderson in that exchange there is explicit child  
6 pornography.

7 There are other trades that went on, and according to the  
8 -- not my report, but the CART examiner report, there was  
9 evidence of distribution on using the Google Hello Chat line  
10 -- Google Hello Website, and I researched some of that, and  
11 there are other trades where John Anderson received explicit  
12 child pornography.

13 Again, number of images, I did not count, you know -- did  
14 not go into all of the trades and did not count each one, but  
15 I looked at two or three specific examples. One was with  
16 Virginia Bull, one is with Pilot for Play and one is -- and  
17 certainly one is this B-O-N-E-R-N-A-T-I-L, I believe it is,  
18 and number of images, specifically, I can't really say, you  
19 know, but in this report there's two or three.

20 **MR. MCCOMMON:** Your Honor, that was my recollection is  
21 I was going to say perhaps 10 or less.

22 **THE WITNESS:** Of the exchange with this one website?

23 **MR. MCCOMMON:** Yes.

24 **THE WITNESS:** Yes, but this is just one. There are  
25 other trades and other evidence of distribution.

1           **THE COURT:** The government has handed me your report.

2           **THE WITNESS:** Yes, sir. And my report is extracted  
3 based on review of the forensic CART examiner, Michael Hammer,  
4 which I have with me as well.

5           **THE COURT:** Now, what does that mean?

6           **THE WITNESS:** Well, what I'm saying is it's a review of  
7 the evidence and a review of his report where he indicates in  
8 his official report that there's evidence of distribution in  
9 the Google Hello website.

10          **MR. MCCOMMON:** Your Honor, we had Agent Hammer, who was  
11 the FBI's forensic examiner come down, and he spent a day with  
12 us here in Macon, and I asked him specifically to show me  
13 what, if any, evidence he had of distribution, and he didn't  
14 show me anything other than what she identified in her report  
15 as being distribution of anything that would be arguably or  
16 close to the line of being child pornography.

17          **THE WITNESS:** I did bring examples of the Virginia Bull  
18 with me, if the Court wishes to review that.

19          **MR. MCCOMMON:** Okay.

20          **THE COURT:** Is that -- Virginia Bull, is that a part of  
21 what's mentioned in this paragraph? Do you understand what  
22 I'm talking about here?

23          **THE WITNESS:** Yes, sir. Yes, sir. When I wrote that,  
24 I referred to my own review and a CART examiner report that  
25 indicates that there was -- that there is distribution,

1 evidence of distribution, and when I reviewed the Virginia  
2 Bull and the applicant -- there's several screen names --  
3 B-O-N-E-R-I-N-A-T-L -- then that's where I, you know, reviewed  
4 the evidence of distribution.

5 **MR. MCCOMMON:** Do you have the photographs with you?

6 **THE WITNESS:** Uh-huh.

7 **THE COURT:** Did you think the photographs were  
8 pornographic?

9 **THE WITNESS:** I think there's a couple of them that are  
10 considered -- in the Virginia Bull, I certainly think there is  
11 blatant evidence of receipt of child pornography by John  
12 Anderson from Virginia Bull.

13 **THE COURT:** Is that distribution?

14 **THE WITNESS:** My understanding is it's sending or  
15 receiving, but I'm not the expert on that.

16 **THE COURT:** What's the government's position -- What  
17 about that, Mr. Hogue?

18 **MR. HOGUE:** Receipt is not distribution.

19 **THE WITNESS:** Receipt is not distribution?

20 **MR. HOGUE:** Right. I mean, he has it on his computer,  
21 and he's pled guilty to that. He had to have received that  
22 from somewhere. Distribution --

23 **THE COURT:** And that's possession?

24 **MR. HOGUE:** Right. Distribution is a different act.

25 **MR. MCCOMMON:** Your Honor, may I show you an example --

1 I think this will --

2 **THE WITNESS:** Okay.

3 *(Counsel Aside)*

4 **MR. MCCOMMON:** I'm showing the Court now the  
5 photographs that were described in the report. Those are the  
6 actual photographs.

7 *(Counsel Aside)*

8 **MR. MCCOMMON:** And, Your Honor, I'll hand to you now  
9 what Agent Ward has provided. These are photographs that were  
10 apparently sent to the individual with the screen name  
11 Boneranatil.

12 **THE COURT:** I'm looking here, Agent Ward --

13 **THE WITNESS:** Uh-huh.

14 **THE COURT:** -- at two pages. I don't know how to  
15 identify them, but each one is -- each is part of a series of  
16 pages.

17 **THE WITNESS:** Uh-huh.

18 **THE COURT:** This one, the one I'm showing you now says  
19 page one of seven. Can you specifically identify that, that  
20 page?

21 **THE WITNESS:** Yes.

22 **THE COURT:** Or that group? Tell me what that is.

23 **THE WITNESS:** Those are pictures -- the two pictures at  
24 the top, if you'll look at the top, it says those pictures  
25 sent by local user. Those are going to be pictures sent by



1 John Anderson and to Boner -- I don't know how you pronounce  
2 that.

3 **THE COURT:** Yes. Okay.

4 **THE WITNESS:** And then they'll talk about those  
5 pictures, and then it goes on to pictures that that individual  
6 sent to him. This is screen name Applicant, again local user  
7 sending two pictures. These would be the pictures. The send  
8 one is questionable. Certainly --

9 **THE COURT:** Right. And on this one, the second from  
10 the top?

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** And so those are the only two images which  
13 are the subject of this --

14 **THE WITNESS:** No, sir. No, sir, not just -- not the  
15 only two. Then there's other -- there is Pilot For Play is  
16 mentioned in my report, further down. I don't believe I have  
17 that one with me, but that is -- there is an indication of  
18 distribution in that one, and then I brought another one with  
19 me with Virginia Bull. I'm just trying to put my fingers on  
20 it here.

21 **THE COURT:** I want to do this. I want to recess this  
22 hearing, and I want you and Agent Ward, and possibly Mr.  
23 Hogue, to go through these things and be able to place before  
24 me what it is that's referred to in this third paragraph of  
25 Agent Ward's report so that these things can be identified.

1 These images, as I understand it, are the images that both the  
2 government and the defense concede were distributed, but are  
3 not child pornography. Is that right?

4 MR. MCCOMMON: Yes, sir.

5 THE COURT: All right. Rather than me trying to sift  
6 through, sitting on the bench with Ms. Ward, everything that's  
7 the subject matter of that paragraph, I would like for you to  
8 take the time to reconstruct it and then present it to me so  
9 that I can then look at it, if it's not excessively  
10 voluminous, and I gather that it's not, and possibly determine  
11 for myself whether it's child pornography. Can you do that?

12 MR. MCCOMMON: Yes, sir.

13 THE COURT: All right. Let me hand these back to you,  
14 Ms. Ward, and if you all will do that -- I can keep this for  
15 the moment -- so let's recess the Anderson hearing, and while  
16 they're doing that, we can go on to something else. This  
17 matter is in recess. You can let me know when you're ready to  
18 proceed.

19 MR. MCCOMMON: Are you talking about today?

20 THE COURT: I sure am.

21 MR. MCCOMMON: Okay.

22 *(RECONVENED; ALL PARTIES PRESENT)*

23 THE COURT: All right. Let's come back to the Anderson  
24 case.

25 MR. MCCOMMON: Your Honor, may I ask that Special Agent

1 Ward retake the stand?

2 **THE COURT:** Yes. Be seated, please. All right. Go  
3 ahead.

4 *(CONTINUED EXAMINATION OF JALAINÉ WARD)*

5 **BY MR. MCCOMMON:**

6 **Q.** Special Agent Ward, at my request did you produce a  
7 report of any evidence in this case that would have shown  
8 distribution by Mr. Anderson of child pornography?

9 **A.** Yes.

10 **Q.** And we've previously gone over the report with the Court?

11 **A.** Yes.

12 **Q.** The Court has had a chance to read it?

13 **A.** Yes.

14 **Q.** I want to show you now three exhibits that I believe will  
15 be shown to correspond to that report that's previously been  
16 read by the Court. Let me show you Government Exhibit 1, and  
17 can you identify Government Exhibit 1 as three images that  
18 were sent by the defendant to Applicant 002002 on March the  
19 18th, 2006?

20 **A.** Yes.

21 **MR. MCCOMMON:** Your Honor, I'll publish these to the  
22 Court as I put them in.

23 **THE COURT:** Has defense counsel had an opportunity to  
24 look at these?

25 **MR. HOGUE:** Yes, Your Honor. These are, in fact, the

1 photographs that were the subject of the negotiations we've  
2 addressed in our objection.

3 **THE COURT:** All right. Very good. Go ahead.

4 **BY MR. MCCOMMON:**

5 **Q.** Special Agent Ward, I'm now going to show what's marked  
6 as G-2, or Government Exhibit 2, and can you identify these as  
7 images that were sent by the defendant to Boner in Atlanta on  
8 February the 25th of 2006, I believe, that was 59 images?

9 **A.** Yes. 54, uh-huh.

10 **MR. MCCOMMON:** Your Honor, let me publish these to the  
11 Court. They begin at the bottom of the page, the first page.

12 **BY MR. MCCOMMON:**

13 **Q.** And, Special Agent Ward, let me show you Government  
14 Exhibit 3, marked as G-3. Can you identify these as 180  
15 images sent by the defendant to, again, Boner in Atlanta on  
16 January the 29th, 2006?

17 **A.** Yes.

18 **MR. MCCOMMON:** And, Your Honor, I publish these for the  
19 Court, and they start at the top of the first page shown.  
20 Your Honor, that would be the extent of the government's  
21 evidence concerning any distribution of arguable child  
22 pornography in this case.

23 **THE COURT:** All right. Questions, Mr. Hogue?

24 **MR. HOGUE:** No questions, Your Honor.

25 **THE COURT:** All right. With respect to these exhibits,

1 Agent Ward, which of these pictures in your judgment are  
2 arguably child pornography, as opposed to just pictures of  
3 children?

4 **THE WITNESS:** This would be (*indicating*). This would  
5 be one in here.

6 **THE COURT:** Let me see, now, this is Exhibit 1. There  
7 are three pictures on the first page of Exhibit 1.

8 **THE WITNESS:** Yes.

9 **THE COURT:** Did you point out any of those pictures?

10 **THE WITNESS:** Yes, the second one.

11 **THE COURT:** The middle picture?

12 **THE WITNESS:** Yes.

13 **THE COURT:** And then on the second page of Exhibit 1,  
14 the middle picture of those three?

15 **THE WITNESS:** Yes. And basically what that second page  
16 is showing --

17 **THE COURT:** Well, that's the same picture?

18 **THE WITNESS:** Exactly. It's showing a summary of what  
19 was sent by the local user on that second page, and so it  
20 would be the one image.

21 **THE COURT:** Okay.

22 **THE WITNESS:** And then, this exhibit, it would be --  
23 just making sure -- there's one sent by the user, and then  
24 certainly a couple received (*indicating*). One sent, that is  
25 the second image on the top line, there.

1           **THE COURT:** All right. I'm going to put an arrow  
2 there.

3           **THE WITNESS:** Uh-huh.

4           **THE COURT:** This is first -- well, I can't say it's the  
5 first -- It's marked G-2, and to the right of G-2, it says  
6 page six of seven, and on that sheet of paper there are three  
7 rows of small photographs, and you are referring to the  
8 photograph on the top row, which is the second from the left?

9           **THE WITNESS:** That's right.

10          **THE COURT:** Okay. And that's all in G-2?

11          **THE WITNESS:** I believe so, yes.

12          **THE COURT:** All right. And then G-3.

13          **THE WITNESS:** That was sent, yeah.

14          **THE COURT:** G-3, would you identify what photographs  
15 you think are arguably child pornography?

16          **THE WITNESS:** I don't have --

17          **THE COURT:** You know, I think I have the color ones  
18 here in the Court's file. I know I do on some of them. These  
19 were part of the probation report to me. It might be better  
20 to use them. They are certainly more -- the black and whites  
21 are kind of grainy.

22          **MR. MCCOMMON:** Your Honor, while she's marking that,  
23 may I make a statement?

24          **THE COURT:** Yes, sir.

25          **MR. MCCOMMON:** I think she's identified photographs, if

1 I heard her correctly, that were received. If this two-level  
2 enhancement is appropriate for receipt, then obviously it  
3 applies because everything that he has he received. But  
4 according to the definition in this Guideline of distribution  
5 what he received should not be applicable for this  
6 enhancement. I mean, by its very definition in the Guideline,  
7 distribution is something he distributes to someone else. If  
8 receipt applies, obviously the enhancement would apply, but  
9 then there's no need for the enhancement because everything he  
10 has he received.

11 **THE COURT:** You gentlemen told me before the recess  
12 that you agreed that there was distribution. You said you  
13 didn't have any quarrel with "distribution." Your opinion  
14 was, at least the government's, and, of course, the defense  
15 agreed, that the images portrayed, the images distributed were  
16 not child pornography --

17 **MR. MCCOMMON:** Yes, sir.

18 **THE COURT:** -- but that it was a matter in which the  
19 Court could inspect the images for itself and make a  
20 determination. Do I misstate what was said?

21 **MR. MCCOMMON:** No, Your Honor, that's correct.

22 **MR. HOGUE:** I think what we're saying is some of what  
23 you're being shown is pictures received, not distributed.

24 **MR. MCCOMMON:** Not distributed by the defendant.

25 **THE WITNESS:** But I'm going to specify the ones that

1 we're pointing out that were sent, that we agreed on.

2 **MR. HOGUE:** Which I understand is the only ones the  
3 Court is interested in with respect to this objection.

4 **THE COURT:** Well, I'm interested in the pictures which  
5 are the foundation for the proposed enhancement.

6 **MR. HOGUE:** Right.

7 **THE COURT:** -- to which objection has been made.

8 **MR. HOGUE:** Yes. And what the government and the  
9 defense is saying is that some of these on those pages are not  
10 the subject of Paragraph 22 because they were not distributed  
11 by Mr. Anderson.

12 **THE COURT:** Well, we left here -- you left here with  
13 instructions to provide me with exhibits of the materials that  
14 had been distributed, but which were contended not to be  
15 pornographic.

16 **MR. HOGUE:** Right.

17 **MR. MCCOMMON:** And --

18 **THE COURT:** And with the assumption in my looking at  
19 these photographs is that they were distributed. They were  
20 distributed, that's what you said, and I said, okay, show me  
21 what was distributed so I may make a determination as to  
22 whether or not they are pornographic. And that's what I  
23 assume we are doing here. Now, if we're not doing that, then  
24 we'll stop again and go back to square one.

25 **MR. MCCOMMON:** No, Your Honor. That's correct, but the



1 summary reports show not only what was sent to those chat  
2 people, but what they sent back, what was received by him. So  
3 what we have attempted to mark here is just what he would have  
4 distributed.

5 **THE WITNESS:** Right.

6 **MR. HOGUE:** And if I may interject, I believe what I  
7 did back in the room during the break was looked at the ones  
8 that the government marked, and I thought that's what the  
9 witness was giving up to the Court just now. And we marked a  
10 handful of photos on some black and white summary reports.  
11 But, now --

12 **THE WITNESS:** If you trust me, Frank, I can label these  
13 same three or four that we came up with that were sent, if you  
14 want me to put -- I'll put an S by the ones --

15 **MR. HOGUE:** The same ones we just did in the room?

16 **THE WITNESS:** Yes, sir.

17 **MR. HOGUE:** I'm fine with that.

18 *(Pause-Aside)*

19 **THE COURT:** I want you to do this. I want you to take  
20 these down, get with government's counsel and defense counsel,  
21 rather than handing me up a number of sheets --

22 **THE WITNESS:** Okay.

23 **THE COURT:** -- extract the pages that have the  
24 contested the images on them, give me only those sheets, and  
25 have them clearly marked as to which they are.

1           **THE WITNESS:** Yes, sir.

2           **MR. HOGUE:** And I'll point this out, Your Honor, with  
3       respect to the Court's use of the word "contested," neither  
4       party here contest those.

5           **THE COURT:** That may have been a misstatement.

6           **MR. HOGUE:** Thank you, Your Honor.

7           **THE COURT:** I'm going to say questionable, because  
8       there's a question in the Court's mind.

9           **MR. HOGUE:** Raised, I take it, by U.S. Probation, not  
10      by the government or the defense, though.

11          **THE COURT:** Raised by the Court.

12          **MR. HOGUE:** Thank you, Your Honor.

13      *(Pause-Aside)*

14          **THE COURT:** All right. I'm holding one, two, three --  
15      four pages containing -- each containing small color  
16      photographs, and I'm going to mark this Court's Exhibit 1.

17      *(Aside)*

18          **MR. HOGUE:** Your Honor, are you getting to the further  
19      clarification that will be needed?

20          **THE COURT:** I'm trying to.

21          **MR. HOGUE:** I think we can help the Court do that.

22          **THE COURT:** All right.

23          **MR. HOGUE:** Because not every photo on those four  
24      pieces of paper is now being contended by the witness --

25          **THE COURT:** I understand that. Ms. Ward says, that's

1 on this first page, there's a little photograph here marked  
2 with an S.

3 **THE WITNESS:** Yes, sir.

4 **THE COURT:** And it's your judgment that that's  
5 pornographic?

6 **THE WITNESS:** Right.

7 **THE COURT:** And then on the second page, the second  
8 photograph down is marked with S by Ms. Ward, and that's  
9 another photograph that in your judgment is arguably  
10 pornographic?

11 **THE WITNESS:** Yes, sir. And if I might clarify, it's  
12 not necessarily just the photo alone. It's the photo in  
13 conjunction with the conversations about having sex with the  
14 child and the bartering back and forth of something obviously  
15 that both parties on both ends want to have, for that purpose,  
16 for sexual -- so it's a combination of the picture and the  
17 chat that I feel is --

18 **THE COURT:** Well, that raises another question now.

19 **MR. HOGUE:** That's completely irrelevant.

20 **THE WITNESS:** Okay.

21 **THE COURT:** Do you agree with that? I mean, I did not  
22 understand that it was a violation of law for people to chat  
23 back and forth on a computer about these things. It's the  
24 images that are the offense.

25 **MR. MCCOMMON:** That's correct.

1           **THE WITNESS:** Okay.

2           **THE COURT:** Is that correct?

3           **MR. MCCOMMON:** That's correct.

4           **THE COURT:** Do you agree?

5           **MR. HOGUE:** I do.

6           **MR. MCCOMMON:** The chat would show the intent.

7           **THE WITNESS:** Okay.

8           **THE COURT:** All right. On the third page there are  
9 five pictures here, and the third one, is that -- do you  
10 contend that?

11           **THE WITNESS:** Yes. And I apologize, I meant to put an  
12 S by that, rather than a three, I was counting, that's an S.

13           **THE COURT:** All right. I'll put an S by it. And then  
14 on the fourth page, in the top row, the photograph second from  
15 the left on the top row?

16           **THE WITNESS:** Yes.

17           **THE COURT:** Okay. All right, this is Court's Exhibit  
18 C-1, and it's admitted, and we are all in agreement about the  
19 pictures, are we not, Mr. Hogue?

20           **MR. HOGUE:** Yes, sir.

21           **THE COURT:** Do you want to look at that one more time?

22           **MR. HOGUE:** Yes, if I may. Yes, we are in agreement as  
23 to the four photographs marked.

24           **THE COURT:** All right. Anything else anybody wants to  
25 say about these pictures? Diane --

1       *(Aside)*

2               **THE COURT:** Yes, they'll be sealed. Mr. Hogue,  
3 anything else?

4               **MR. HOGUE:** With regard to the photos?

5               **THE COURT:** Yes.

6               **MR. HOGUE:** Well, simply this, Your Honor, just to get  
7 us back to where we started. Both the government and the  
8 defense viewed them in discovery and negotiations, and both  
9 the government and the defense concluded that they do not fit  
10 the definition in the statute, and thus we negotiated our plea  
11 deal accordingly, and that's why we both now object to  
12 Paragraph 22.

13               **THE COURT:** All right. The Court has inspected these  
14 marked pictures in Exhibit C-1 and finds that on page one,  
15 page one of Exhibit C-1, the middle photograph marked S meets  
16 the definition of child pornography.

17               On page two, the second picture down from the top, that  
18 meets the definition.

19               On page three, the third photograph down from the top,  
20 does not meet the definition.

21               And on page four, the photograph in the top row, second  
22 from the left, does not.

23               So we have two that do. Distribution is admitted. And I  
24 overrule the objection to Paragraph 22.

25               **MR. HOGUE:** And, Your Honor, for clarity of the record,

1     you're using, I presume, the definitions of child pornography  
2     and minors engaging in sexually explicit conduct that are set  
3     out in 18 U.S.C. Section 2252 and 2256, I presume?

4             **THE COURT:** I don't have those statutes in front of me.  
5     I will issue a written order.

6             **MR. HOGUE:** Thank you.

7             **THE COURT:** Okay. That takes care of the objection to  
8     Paragraph 22. Paragraph 24 -- yes, anything else you want to  
9     say about that?

10            **MR. MCCOMMON:** No, Your Honor.

11            **THE COURT:** Mr. Hogue?

12            **MR. HOGUE:** No, Your Honor.

13            **THE COURT:** Where is Ms. Thomas? Come up here a  
14     minute.  
15     *(Aside)*

16            **MR. HOGUE:** Your Honor, if I may add one further  
17     clarification to the Court's finding just now, I did cite the  
18     statute, but can I very briefly say what it includes as  
19     prohibited, to possess and distribute, and it would be a minor  
20     engaged in sexually explicit conduct, which the statute at 18  
21     U.S.C. Section 2256(2) defines as "actual or simulated," and  
22     there are five subparts, "sexual intercourse," and it breaks  
23     that down into all the different ways that can occur,  
24     "bestiality, masturbation, sadistic or sadistic abuse," and  
25     finally, "lascivious exhibition of the genitals or pubic

1 areas." So that's why we concluded in --

2 **THE COURT:** The Court's ruling is based on the last one  
3 you mentioned.

4 **MR. HOGUE:** All right.

5 **THE COURT:** Anything else y'all want to say with  
6 respect to Paragraph 24?

7 **MR. HOGUE:** That was 22, Your Honor.

8 **THE COURT:** I understand, you and I just addressed  
9 Paragraph 22, lascivious expedition.

10 **MR. HOGUE:** Correct.

11 **THE COURT:** I've ruled on Paragraph 22. I'm now  
12 considering the objection to Paragraph 24. Anything else  
13 anybody wants to say about that?

14 **MR. MCCOMMON:** No, Your Honor.

15 **THE COURT:** All right. It's apparent to me that there  
16 are many, many more images, 600 or more, a part of which were  
17 included on the hard drive and part of which were included in  
18 other forms.

19 The government apparently has reservations about which  
20 images would pass evidentiary scrutiny in a trial, but I don't  
21 believe that that limits the Court's consideration of the  
22 other materials.

23 The objection to Paragraph 24 is overruled. All right.  
24 Any there other objections?

25 **MR. MCCOMMON:** Not from the government, Your Honor.

1           **THE COURT:** Mr. Hogue?

2           **MR. HOGUE:** No. Those are our only objections to the  
3           presentence report.

4           **THE COURT:** All right. It's nearly lunch. I'm going  
5           to recess until 1:30. I'll hear your arguments at that time  
6           and impose sentence.

7           **MR. HOGUE:** May I ask for one consideration, Your  
8           Honor? I do have a plea hearing scheduled with Judge Ennis at  
9           1:30. I can call him and ask that to be changed or --

10          **THE COURT:** Yes, do that.

11          **MR. HOGUE:** I'll do that, Your Honor.

12          **THE COURT:** All right. I also understand there are  
13          people who want to address the Court, and I'll hear whoever  
14          wants to.

15          (*RECONVENED; ALL PARTIES PRESENT, 1:30 p.m.*)

16          **THE COURT:** Be seated, please. All right. Does the  
17          government have anything else to say?

18          **MR. MCCOMMON:** Your Honor, the only thing I'd like to  
19          do is the Court requested that I file with the Court the  
20          response of Mr. Marsh waiving restitution. So let me file  
21          that with the Court at this time. I'm filing a letter that I  
22          wrote to him on June 25th, and then an e-mail that he sent to  
23          me on July 14th withdrawing his request for restitution.

24          **THE COURT:** Very good. Thank you. Let that be filed.

25          **MR. MCCOMMON:** Nothing further.



1           **THE COURT:** All right. Mr. Hogue?

2           **MR. HOGUE:** May I have one moment to confer with the  
3 U.S. Attorney, Your Honor?

4           **THE COURT:** Sure.

5           *(Pause)*

6           **MR. MCCOMMON:** Your Honor, the government has nothing  
7 to offer further, but it's my understanding that Nancy  
8 Anderson, the ex-wife of the defendant, wants to address the  
9 Court.

10          **THE COURT:** I'll be glad to hear from her. Ms.  
11 Anderson, you can come up and stand right there in front of  
12 me. Identity yourself for the court reporter, please.

13          **THE WITNESS:** Nancy S. Anderson.

14          **THE COURT:** Proceed.

15          **THE WITNESS:** I appreciate the Court for letting me  
16 speak today. April 21st, 2006 was the day I found out that  
17 the man I had been married to for 16 years was involved in  
18 child porn and was a pedophile. Lee had thousands of CDs and  
19 videos at our house and the storage facility. What a shock.  
20 Our lives changed forever. The direct victims were the images  
21 of the naked boys and girls and many had bruises on their  
22 legs. I still have flashbacks of the disgusting pictures I  
23 saw, Lee, and hopefully they will diminish with time, but it  
24 has been over three years. The indirect victims are our  
25 children, your parents, Dr. and Mrs. Anderson, your sisters

1 and their children, and myself. Our children will always have  
2 to deal with their father being a pedophile. That's just  
3 turned our world upsidedown, and I'm the one holding the bag  
4 trying to make things right. Your selfish actions went on for  
5 many, many years, unbeknownst to me. I was naive and  
6 trusting, and you used that to your advantage. It was such a  
7 violation of my trust in you, Lee --

8 **THE COURT:** Let me interrupt you, if I may,  
9 Ms. Anderson. I'm glad to hear from you on any matter which  
10 -- anything you have to say in furtherance of sentencing. I  
11 understand that you harbor deep feelings of ill will and  
12 resentment toward Mr. Anderson, but I'm not going to allow you  
13 simply to stand here and castigate your former husband, you  
14 know, just for your own satisfaction. That has no proper  
15 place in this proceeding.

16 I have read your letter, word for word. I understand  
17 clearly what it says and how you feel, and I sympathize with  
18 you, but what you're doing now simply has no place in this  
19 proceeding. Now, if you want to continue on another vein or  
20 say anything else to me, I'll be glad to hear you.

21 **THE WITNESS:** Well, I feel like I am a victim and my  
22 children are a victim.

23 **THE COURT:** Yes, ma'am, you are indeed a victim. I'm  
24 in total agreement with you about that. But that does not  
25 entitle you to give a court-sanctioned lecture to your former

1 husband, and you may not understand that, and I'm sorry if you  
2 don't, but that's going to be the rule.

3 **THE WITNESS:** Okay.

4 **THE COURT:** Is there anything else you'd like to say?

5 **THE WITNESS:** No.

6 **THE COURT:** Okay, thank you, ma'am.

7 **THE WITNESS:** Hopefully justice will be served.

8 **THE COURT:** All right. Is there someone else?

9 **MR. MCCOMMON:** No, Your Honor, not from the government.

10 **THE COURT:** Mr. Hogue, anyone else for you?

11 **MR. HOGUE:** Yes, Your Honor. I know that the Court has  
12 received a number of letters.

13 **THE COURT:** They've all been read.

14 **MR. HOGUE:** There's about 15 or so of them. There are  
15 some family members here. Two of them have expressed an  
16 interest in saying a few brief words to the Court in  
17 connection with sentencing. If the Court will allow Laura  
18 Edwards, who is Mr. Anderson's sister, and then his mother and  
19 father, if they could come forward, his mother would have a  
20 few words as well. Would you like them to come up  
21 individually, however?

22 **THE COURT:** They can all come together if they like.

23 **MR. HOGUE:** Doctor and Ms. Anderson, if you would come  
24 up as well. And, Ms. Edwards, introduce yourself to the Court  
25 and say your name for the court reporter.

1           **THE WITNESS:** I'm Laura Anderson Edwards, the sister of  
2           Lee, and I just want to ask for leniency. He's been a  
3           wonderful brother and an uncle to my children, and I've always  
4           trusted him with my children. I have two that are grown, and  
5           one that is 14. And I just beg your mercy.

6           **THE COURT:** I understand.

7           **MR. HOGUE:** Your Honor, this is Lee's parents,  
8           Mr. Anderson's parents, Dr. Anderson and Bobbi Anderson.

9           **THE COURT:** Yes.

10          **THE WITNESS:** I just want to ask for leniency for my  
11          son because we have not many years left for us, and we love  
12          our son, and we support him, and we will always support him.  
13          And for his -- actually he has a good relationship with his  
14          children, and for their sake, I think he needs to be in their  
15          life. That's all I have to say. I just plead for leniency.

16          **THE COURT:** Yes, ma'am. Thank you, Ms. Anderson. Dr.  
17          Anderson?

18          **THE WITNESS:** I have to speak for him. He does have  
19          bad health. I just have to speak for him.

20          **THE COURT:** Very good.

21          **THE WITNESS:** Thank you, Your Honor.

22          **MR. HOGUE:** Your Honor, Mr. Anderson also would like to  
23          address the Court, and I'll say a few final words for him.

24          **THE COURT:** All right, Mr. Anderson.

25          **THE DEFENDANT:** Your Honor, it's hard, if not

1 impossible to express my sorrow for the hurt that I've caused  
2 so many people who are dear to me. My loved ones, innocent  
3 people, have received painful scars for life and have been  
4 hurt only because of their association and love for me.

5 The pain that I caused myself was self-inflicted, but the  
6 pain that they have endured is the pain that is hard for me to  
7 live with. I deserve my pain, but they don't deserve any  
8 pain.

9 Anyone who thinks that viewing pornography doesn't hurt  
10 anyone is wrong. Not only the victims of the pornographic  
11 images are hurt, but everyone that's dear to the person  
12 viewing them is also hurt. Viewing pornography on your  
13 computer is bringing a destructive force into your home.

14 Anyone who views pornography on a computer has a very  
15 good chance at some point of being sent some form of child  
16 pornography if they continue to view it. At that point they  
17 have several choices, and you must make a decision either to  
18 report the individual who sent the material to you, or take  
19 the cowardly action and try to ignore the images.

20 If you take no action because you're worried that your  
21 wife might find out that you're viewing pornography or that  
22 you might be afraid that you might get yourself in trouble, I  
23 say that anyone who may find themselves in that situation to  
24 stand up, and the only way to prevent the problem from  
25 spreading is to take the courageous action and report someone

1 who does send that type of material over the Internet.

2 Ignoring the act is ignoring the problem, and it's  
3 allowing the problem to continue to grow. Don't ignore the  
4 problem and seek help. Some good books that I've read that  
5 have helped me is Every Man's Battle by Steve Arterburn.

6 And I would say, if you are married, to seek marriage  
7 counseling and individual counseling, and if you're not  
8 married, please seek individual counseling on your own.

9 You can overcome the problem, but if you ignore the  
10 problem, then you, too have a good chance of ending up where I  
11 stand today, and that is, hurting the ones that you love,  
12 destroying your family, your career, your name, your  
13 reputation, all that you've cherished and worked so hard for,  
14 destroying the dreams for your loved ones as I have done.

15 The people who I have hurt by my actions have shown me  
16 nothing but unconditional love. I'm thankful for the three  
17 and a half years that I've had to rebuild these relationships,  
18 although the hurt that I have caused can slowly heal, the pain  
19 and the scars will always remain for both them and for me, but  
20 the pain that hurts the most is knowing that you've caused  
21 them pain. Knowing that I've hurt them hurts the most.

22 Although I'm a better father than I once was, my children  
23 have lost a father to be at their side in times of their joy  
24 and also to be there to comfort them in their time of  
25 distress. The time that we do get to share is always filled

1 with love and joy, although we all know that that time that we  
2 have to share together is for a short time until we get to see  
3 each other again.

4 I have not been able to participate in my children's life  
5 at all for the last six months, and I know that after today  
6 that time apart will be much longer. I want them to know that  
7 I love them and that I'm sorry for my actions. I ask and I  
8 hope that they can forgive me for not being there and for not  
9 being there for them in this critical time in their lives.

10 I ask them not to harden their hearts and to continue to  
11 love God and remember that God causes all things to work  
12 together for good for those who love him. To my parents who  
13 have stood by me and supported me, I want to again say that  
14 I'm sorry. They have always shown me unconditional love and  
15 have always taught me and shown me strong values.

16 I am sorry for disappointing and hurting them, and I  
17 treasure their love. They should be enjoying their golden  
18 years, yet I have hurt them deeply. Over the last three and a  
19 half years we have grown closer, but I'll never be able to  
20 make up for the hurt that I've caused them.

21 My sisters and their family have also been through much  
22 pain and hurt as a result of my actions. I am thankful for  
23 the love and support that they have give me, and I'm sorry for  
24 the hurt that I've caused them.

25 To my ex-wife Nancy I too am sorry for the pain and

1 disruption that I have caused in her life. Although we did  
2 have our problems, I never meant to hurt her, and I accept the  
3 blame.

4 Finally, to the Court, I apologize that my actions have  
5 caused me to appear before you today and that I've taken up  
6 valuable court time. I've tried to accept the responsibility  
7 for my actions and to minimize the use of the court's time and  
8 resources.

9 I ask for your grace and mercy today as you pronounce  
10 your sentence, and I have to live daily with the pain that I  
11 have caused the ones that I love. Your grace in sentencing  
12 will allow me to continue to rebuild and repair the hurt that  
13 I've caused my children, my parents, my ex-spouse, Nancy, and  
14 my siblings.

15 Every day that I'm allowed to spend with them is precious  
16 to me. I ask for an opportunity to continue to repair the  
17 hurt that I've caused while my children are still young and  
18 while I still have my parents with me. Thank you, sir.

19 **THE COURT:** All right, thank you.

20 **MR. HOGUE:** If Your Honor will allow me to a few  
21 concluding words on behalf of Mr. Anderson. As the Court well  
22 knows, justice in American criminal courts is achieved on a  
23 case by case basis. We don't achieve it in the abstract. So  
24 the question today is what's justice for John Lee Anderson,  
25 III in light of the crimes he's committed.



1           When we entered the case three and a half years ago, and  
2           that's how long ago this broke, and began our negotiations  
3           with the government, Mr. Anderson admitted to me and  
4           ultimately to the world that he was guilty, that he did  
5           possess and view child pornography.

6           So, I told the government that, and we waived the grand  
7           jury process and pled guilty to an information. We didn't  
8           want to put the government even to the burden of presenting  
9           the case to the grand jury, and that's what we did. No  
10          indictment was ever even drawn up.

11          Also, in negotiating what we believed to be, the  
12          government and defendant, a fair resolution for justice in our  
13          collective opinion, we negotiated to a result that we hoped --  
14          though we know Paragraph Five of the presentence report says  
15          none of what we negotiated is binding on this Court, and I'm  
16          well-aware of that -- but we negotiated what we hoped would be  
17          a fair and just result, and that result would have been a  
18          sentencing range of 41 to 51 months.

19          I realize that by rulings made earlier today in this case  
20          we may not be in that range any longer. But those were  
21          matters that we looked hard at, negotiated about, and hoped  
22          that the Court would accept in accepting Mr. Anderson's plea  
23          and imposing sentence on him.

24          How much liberty should be taken from this man for what  
25          he's done? I'm asking the Court for some temperance and some

1 proportionality here. These are difficult crimes to deal with  
2 as a defense lawyer, as a prosecutor, as witnesses, and as the  
3 Court.

4 I've done many of them, as well as state cases involving  
5 child molestation, and I find in my own experience there's no  
6 kind of case that causes greater revulsion and emotional  
7 response than one involving children and sexual exploitation.  
8 Even murder cases don't get the kind of ire that these do.

9 So, the Court, I know, brings to the equation temperance  
10 and wisdom and can impose a sentence that's proportional. In  
11 our state system, for example, as the Court well knows, a  
12 person can face a minimum of five years, which is less than  
13 what Mr. Anderson is looking at here for actual molestation of  
14 a live child.

15 I don't say that to minimize what harm has been down  
16 here. I've read the victim impact statements. They're quite  
17 moving. Mr. Anderson has read them, and they cause him great  
18 pain, and he's expressed that just now to the Court.

19 So, I ask that the Court take into consideration a couple  
20 of other factors here that are not objections, of course, but  
21 just additional information, some of which is in the  
22 presentence report.

23 But for the last three and a half years since this came  
24 to light, Mr. Anderson has sought the assistance of Dr. Gene  
25 Able up in Atlanta near Emory University at a place called

1 Behavioral Medicine Institute of Atlanta where he underwent  
2 extensive testing to determine whether or not he fit the  
3 criteria of pedophilia.

4 The conclusion reached, after those independent tests,  
5 were that Mr. Anderson does not meet the diagnostic criteria  
6 for pedophilia, and further, Dr. Able recommended that he  
7 participate in specialized sex offender therapy, specifically  
8 a cognitive behavior therapy program with a strong relapse  
9 prevention component to help him gain control over his  
10 behavior.

11 He did that, and for some lengthy period of time he met  
12 regularly with a therapist in the Middle Georgia area dealing  
13 specifically with this issue. He has stayed off the computer.  
14 He's violated no conditions. He's, of course, been found not  
15 to be a danger to children as a pedophile, and further, took a  
16 polygraph test in which he answered questions and a  
17 polygrapher examiner said he passed concerning whether he had  
18 ever made any efforts to reach a live child to act in a  
19 further step to what he did in viewing child pornography.

20 There's no indication that he's ever harmed his own  
21 daughters, and to all accounts, he's been quite attentive and  
22 a good father to him, other than the pain he's caused by this  
23 act, of course.

24 Your Honor, just also in terms of proportionality, a  
25 couple of other things to consider. I know these don't have

1 to do with the loss of liberty that he's about to experience,  
2 but just so the Court will know other losses Mr. Anderson has  
3 suffered as a direct result of this.

4 Before this came to light he was living in a \$400,000  
5 home with his two children and his wife. He was the vice  
6 president of commercial lending at a local bank. He had a  
7 good salary. His wife had a good salary. They lived a good  
8 life. They had good friends. They vacationed together. They  
9 had assets. They had a future.

10 He has lost every bit of that, and he, in fact, has been  
11 in jail in Bibb County since February of 2009 in civil  
12 contempt of divorce court because he was unable to sell a  
13 piece of property and convey the \$50,000 he owed as part of  
14 his divorce agreement. He attempted to sell it. It's still  
15 on the market.

16 I'm not sure, I wasn't his lawyer in that case, but it is  
17 a little puzzling to me that he would be found in contempt for  
18 not selling something no one would buy and has sat in jail for  
19 the last six months. Nevertheless, that's what's happened.  
20 He hasn't had representation in that matter these last few  
21 months, as I understand it.

22 In light of that, though, I'd like to ask this  
23 consideration of the Court, and I don't have any legal  
24 authority for it, but our first sentencing hearing was  
25 scheduled in this case April the 7th of 2009. There have been

1 delays since then, not occasioned that I can tell by any  
2 deliberate effort by anyone to delay the case, it's just one  
3 of those things, and it got delayed until now, late in July.  
4 Some of it perhaps may have been my own scheduling, but others  
5 not.

6 So I ask the Court to at least consider since April 7th,  
7 2009, even though he was not technically in federal custody,  
8 credit for those three months and a half months, and the Court  
9 make that a part of its sentence. More than that, though, I'd  
10 like to ask the Court to impose a sentence that would be  
11 within the advisory guidelines, but that would come down to  
12 the range that we contemplated.

13 I come back at the end on this point with regard to that.  
14 I do know that the Court makes its own independent inquiry and  
15 judgment as to the facts. And I know that plea negotiations  
16 can be entered into in good faith between the parties and that  
17 they don't bind the Court.

18 But I also know that as a matter of practice and a matter  
19 of course, we lawyers do get accustomed to reaching plea deals  
20 that we've worked hard to get, and in the vast majority of the  
21 cases, as the Court well knows, the Court imposes a sentence  
22 in accordance with the judgment of those lawyers and the  
23 defendants themselves.

24 So it's difficult, it's difficult for the defense lawyer  
25 and for his client when that happens, and then we experience

1 what we've experienced today where we, both the government and  
2 the defendant, agreed to what we thought the facts should be,  
3 and the Court has found otherwise.

4 I understand and respect that process, but I ask that,  
5 Your Honor, that you do find it appropriate for Mr. Anderson,  
6 that justice for him means the loss of liberty only in the  
7 range of the 41 to 51 months that we negotiated.

8 I will mention one last thing that hasn't been mentioned,  
9 but there was a provision in the plea agreement that the  
10 government would ask the Court, and it may have just been an  
11 oversight or the government assumes the Court is aware of it  
12 in the plea agreement, to impose the sentence at the low end  
13 of whatever guideline range the Court uses.

14 So that's a matter the government would ask for and has  
15 done so in its plea agreement, and we ask for that, likewise.  
16 Thank you, Your Honor.

17 **MR. MCCOMMON:** Nothing further.

18 **THE COURT:** All right. The guideline computations in  
19 this case, as a result of findings made by the Court in this  
20 hearing, begin with a base level of 18. Two points are added  
21 because the material involved included a prepubescent minor,  
22 or a minor who had not attained the age of 12 years. Two  
23 points are added under Paragraph 23 -- 22. We've discussed  
24 that.

25 Two points are added because the offense involved the use

1 of a computer for the possession, transmission, receipt, or  
2 distribution of the material, and five points are added  
3 because the offense involved 600 or more images. Three points  
4 are taken off for acceptance of responsibility.

5 The total offense level is 26, the criminal history  
6 category is one, and the range is 63 to 78 months.

7 Mr. Hogue, I acknowledge that you don't agree with  
8 Court's rulings on your objections, but the Court having  
9 ruled, do you agree with the computation?

10 **MR. HOGUE:** I do, Your Honor.

11 **THE COURT:** Okay. The presentence report has been  
12 prepared, filed, considered, and accepted. The Court accepts  
13 it and adjudicates Mr. Anderson guilty of Count One of the  
14 indictment. The sentencing guidelines have been consulted and  
15 taken into account, and the Court has announced the range and  
16 offense level.

17 Mr. Anderson, the Court commits you to the Bureau of  
18 Prisons for a period of 70 months. Restitution, as we all  
19 understand, has been settled. There are no restitution  
20 issues.

21 The prison term is to be followed by a period of  
22 supervised release of 20 years. You shall report to the U.S.  
23 probation office in the district to which you are released  
24 within 72 hours of release from the custody of the Bureau of  
25 Prisons to begin service of the term of supervised release

1 which will include the standard and mandatory conditions, as  
2 well as the following special conditions:

3 First, you are prohibited from possessing a firearm or  
4 other dangerous weapon.

5 Second, you shall participate in a substance abuse  
6 program that may include testing to determine whether you have  
7 reverted to the use of drugs or alcohol, and may include  
8 treatment of alcohol and/or drug addiction or dependency.

9 The probation office shall administratively supervise  
10 your participation in the program by approving it,  
11 administering the testing, and supervising the treatment.

12 Third, you shall participate in a mental health program  
13 to include any sexual offender treatments as recommended by a  
14 psychiatrist or a psychologist. Such treatment may include  
15 mental health counseling, residential treatment, outpatient  
16 treatment, and/or the prescription of psychotropic medications  
17 by a medical doctor.

18 The probation office shall administratively supervise  
19 your participation in the program by approving it, and  
20 monitoring your participation in it.

21 Fourth, you shall register with the state sex offender  
22 registration agency in the state where you reside, work, or  
23 are a student as directed by the probation officer.

24 Fifth, you shall not use nor own any device which allows  
25 Internet access, other than those which are authorized by this



1 court and administered by the probation officer. This  
2 includes, but is not limited to, personal digital assistance,  
3 electronic games, web TV solutions, Internet appliances, and  
4 cellular devices.

5 You shall not make repairs, modifications, or install  
6 software on authorized computer systems or cellular devices  
7 without pre-approval by the probation office.

8 You may only access e-mail accounts, chat rooms, instant  
9 messaging services, and/or other online environments which  
10 allow for user interaction via pre-approved and authorized  
11 accounts.

12 You shall not view, access, possess, and/or download any  
13 pornography. This includes, but is not limited to, images of  
14 minors.

15 You shall not possess nor use removable media configured  
16 with bootable operating systems. You shall submit your  
17 computer, associated hardware, and digital media for  
18 monitoring and review by the probation office upon request.  
19 This includes review of your Internet-capable cellular device.

20 Sixth, you shall provide financial information to the  
21 probation officer upon request.

22 Seven, you are prohibited from incurring new credit  
23 charges or opening additional lines of credit without the  
24 approval of the probation office.

25 And, eight, you shall cooperate in the collection of DNA

1 as directed by the probation officer. A mandatory assessment  
2 in amount of \$100 is imposed.

3 It's my opinion you are not able nor likely to become  
4 able to pay all or part of a fine even with the use of a  
5 reasonable installment schedule. I therefore waive the fine,  
6 as well as any alternative sanctions.

7 The sentence as imposed is an appropriate sentence in  
8 this case, complies with the factors that are to be considered  
9 as set forth at 18 U.S.C. 3553(a), and adequately addresses  
10 the totality of the circumstances.

11 Now, Mr. Anderson, you have knowingly and voluntarily  
12 waived your statutory right to appeal this sentence with  
13 certain exceptions as specified in your plea agreement.

14 But if you decide to appeal the sentence based on one of  
15 these exceptions, you must file a notice of appeal with the  
16 clerk of this court within ten days of judgment being entered  
17 in the case.

18 If you decide to appeal, you're entitled to be  
19 represented by a lawyer, and Mr. Hogue will continue as your  
20 counsel. Do you understand the sentence I've imposed?

21 **THE DEFENDANT:** Yes, sir, I do.

22 **THE COURT:** Do you have any questions or objections?

23 **THE DEFENDANT:** No, sir.

24 **THE COURT:** Mr. Hogue, do you understand the sentence?

25 **MR. HOGUE:** I do.

1           **THE COURT:** Questions or objections?

2           **MR. HOGUE:** One request. Voluntary surrender. If I  
3 may briefly say why. But for the civil contempt, Mr. Anderson  
4 would have walked in here from the street where he's been on  
5 bond for the last several years, and the possibility exists  
6 that he may be able to purge himself of that contempt, he's  
7 hoping so, and be released from custody.

8           The Bureau of Prisons may take 60 days or more before  
9 they can place him, and given the length of the sentence,  
10 Mr. Anderson requests that he be allowed to post bond for  
11 voluntary sentence so that he may spend some time concluding  
12 his affairs and spending it with his aging parents before he  
13 goes off to do this 70-month sentence.

14           **MR. MCCOMMON:** Your Honor, may we address this if it  
15 becomes -- if he actually gets out of jail? I'm not sure as I  
16 stand here if there's any statute that we need to be aware of  
17 as to whether or not he can voluntarily surrender.

18           **MR. HOGUE:** There's no statutory impediment to it.  
19 This is a crime for which he could, if the Court decides to  
20 allow it. I believe it was specified to us in one of the  
21 cover letters we got with the PSR, as well, and I didn't find  
22 any disqualifications for the Court to grant this.

23           And again, had he not been in contempt, he would have  
24 walked in here, and I don't think the statute would have  
25 required the Court to take him into custody today. In fact,

1 I'm sure it would not require that.

2 **MR. MCCOMMON:** Your Honor, my only comment would be  
3 that if the Court does grant voluntary surrender, that the  
4 Court might want to consider some conditions over what the  
5 Court would normally do in terms of reporting, so forth.

6 **MR. HOGUE:** He would comply, of course, with any  
7 condition if he's allowed to surrender voluntarily.

8 **THE COURT:** Well, the law does not require a court to  
9 do a useless thing. As of this moment he's incarcerated under  
10 the order of superior court. If he is released by the  
11 superior court, you are welcome to bring an immediate motion  
12 to my attention, and I will rule on it at the time.

13 **MR. HOGUE:** All right.

14 **THE COURT:** Okay. That's all. Mr. Hogue?

15 **MR. HOGUE:** Yes, sir.

16 **THE COURT:** In the Anderson case, you are directed to  
17 file either a timely notice of appeal or a waiver signed by  
18 yourself or your client.

19 **MR. HOGUE:** Yes, sir.

20 **THE COURT:** Very good.

21

22 **(SENTENCING HEARING CONCLUDED)**

23

24

25

*CERTIFICATE OF REPORTER*

*I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT  
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
ABOVE-ENTITLED MATTER THIS 28th DAY OF OCTOBER, 2010*

*s/ SALLY L. GRAY, USCR,  
U.S. DISTRICT COURT-MIDDLE DISTRICT OF GEORGIA  
E-mail: Sally\_Gray@gamd.uscourts.gov*